(88)

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.M.P. No.167/2006

APPLICANT

Satish Kumar Sahu,
Aged about 40 years,
S/o Shri Umed Ram Sahu,
Resident of Dipak Nagar, Durg,
District – Durg (C.G.)

VERSUS

NON-APPLICANTS

1. State of Chhattisgarh,
Through P.S. City Kotwali,
Dhamtari, District – Dhamtari (C.G.)

2. Smt. Mamta Sahu,
Resident of N-13, Section – 2, Avanti Vihar, Raipur, District – Raipur (C.G.)

3. Surendra Sahu,
Aged about 48 years, S/o Shri Umed Ram Sahu, Resident of Dipak Nagar, Durg, District – Durg (C.G.)

4. Nirmala Sahu
Wife of Uttam Ram Sahu, Aged about 50 years, Resident of Dipak Nagar, Durg, District – Durg (C.G.)

5. Smt. Sagun Sahu,
Wife of Kanhaiya Sahu, Aged about 42 years, Resident of Kota, Rampur (C.G.)

6. Smt. Neelima Sahu,
Wife of Surendra Sahu, Aged about 41 years, Resident of Dipak Nagar, Durg, District – Durg (C.G.)

7. Smt. Hiradevi Sahu,
Wife of Umed Ram Sahu, Aged about 48 years, Resident of Dipak Nagar, Durg, District – Durg (C.G.)

Appearance:

Shri Kishore Bhaduri and Shri Ashok Soni, Advocates along with the applicant.

Shri G.K. Beriwal, Dy. Advocate General for the State/respondent No.1.

Shri Y.C. Sharma, Advocate along with respondent No.2 – Mamta Sahu.

Respondent No.4 by Shri Mahendra Dubey, Advocate.

Remaining respondents are present in person.

Identification of parties done by counsel in order sheet.

ORAL ORDER
(21.03.2007)

SUNIL KUMAR SINHA, J.

1. Referring to order dated 26/7/2006 (Annexure A-1) passed in Criminal Case No.203/2006 by the Judicial Magistrate First Class, Dhamtari, learned counsel for the parties submit that a compromise petition under Section 320 of Cr.P.C. was filed by the complainant and accused persons for compounding the said Criminal Case, which was filed under Section 498-A read with Section 34 of IPC, but, since the offence punishable under Section 498-A of IPC is not compoundable under Section 320 Cr.P.C., the learned trial Court had dismissed the said application and had fixed the case for prosecution evidence.

2. The brief facts are that respondent No.2 – Smt. Mamta Sahu was married to the applicant in the year 1991. On certain dispute, a report was lodged by her and a Criminal Case under Section 498-A/34 of IPC was registered against the accused persons and ultimately, a charge sheet was filed. During the pendency of the criminal case, a petition for divorce was filed before the competent Court, in which, both the parties subsequently filed an application under Section 13-B of the Hindu Marriage Act seeking divorce on the ground of mutual consent. Certain conditions were agreed upon for praying for

divorce on mutual consent, according to which, the wife had to receive possession of a Fiat Uno Car and she had also to receive a sum of Rs.4 lakhs as the final amount of settlement towards her maintenance etc. All these are contained in para 6 and 7 of the judgment passed by the Family Court, Durg in Civil Suit No.91-A/2005.

3. Learned counsel for the applicant submits that on such settlement, the aforesaid judgment and decree was passed and ultimately, the marriage between the parties was dissolved on their mutual consent and the parties were directed to comply with the conditions of mutual divorce agreed between them. Learned counsel submits that in lieu of the aforesaid judgment, possession of the Fiat Uno car has already been delivered to respondent No.2 and a sum of Rs.2 lakhs has also been given to her by the applicant. He also submits that the petition has been filed for quashment of the proceedings on many grounds, but presently both the parties are praying that simply, in the facts and circumstances of this case, their compromise filed before the trial Court may be allowed and the proceedings of the criminal case be quashed on the ground of compounding of the offence between the parties alone.

4. Respondent No.2, who is present in this Court also admits that she had received the possession of Fiat Uno car and she has also received Rs.2 lakhs in lieu of the said order and today, she is receiving a cheque bearing No.598235 for Rs. 2 lakhs drawn on ICICI Bank Bhilai Branch and she is giving a separate receipt thereof to the applicant.

5. Let a receipt to this effect be given by her and photocopy of the receipt as well as cheque be also produced before this Court, which shall form part of the record of the petition.

6. I have enquired from respondent No.2 as to whether she is willing to compound the offence as per the conditions mentioned

in the divorce order. On such enquiry, she admits before me that on payment of the balance amount, which she is receiving today, she is willing to compound the offence and if the proceedings of the Criminal Case is quashed in lieu of compounding of the offence, she has no objection.

7. The jurisdiction of the High Court under Section 482 Cr.P.C. regarding quashment of a proceeding u/s 498-A I.P.C. in view of Section 320 Cr.P.C. is no longer *res integra*. It has been observed by the Apex Court in the matter of ***B.S. Joshi and others -Vs.- State of Haryana & another, 2003 (2) C.G.L.J. 35*** that 'there is no doubt that the object of introducing Chapter XX-A containing section 498-A in the Indian Penal Code was to prevent torture to a woman by her husband or by relatives of her husband. Section 498-A was added with a view to punishing a husband and his relatives who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry. The hyper-technical view would be counter-productive and would act against interests of women and against the object for which this provision was added. There is every likelihood that non-exercise of inherent power to quash the proceedings to meet the ends of justice would prevent women from settling earlier. That is not the object of Chapter – XX-A of the Indian Penal Code.' Observing this, the Apex Court laid down that such proceedings can be quashed by the High Court under Section 482 Cr.P.C. in its inherent jurisdiction.

8. After hearing the parties and after being satisfied that after the divorce, mutually taken by both the parties, when the parties have entered into a compromise and are praying for quashing of the proceedings under Section 498-A IPC, it would be just and proper for this Court to accept their compromise and to quash the proceedings under the inherent jurisdiction.

9. Accordingly, the prayer is allowed.

10. Ignoring the grounds pleaded in Criminal Miscellaneous Petition, the proceedings of Criminal Case is hereby quashed on the only ground of compromise entered into between the parties for which an application was filed by them before the trial court and it was dismissed by the said court. The proceedings of Criminal Case No.203/2006 pending in the Court of Judicial Magistrate First Class, Dhamtari are hereby quashed.

Sd/-
Sunil Kumar Sinha
Judge

Rao/ shyna